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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

ANGELA LYNNE CARR,

Plaintiff and Respondent,

v.

PHILLIP CARR, JR.,

Defendant and Appellant.

E064782

(Super.Ct.No. FAMSS1506776)

OPINION

APPEAL from the Superior Court of San Bernardino County. Teresa M. Bennett,
Judge. Affirmed.

Diamond & Associates and David D. Diamond for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Defendant and appellant Phillip Carr, Jr., appeals from the trial court's order
issuing a domestic violence restraining order protecting defendant's former wife, Angela
Carr, and ordering him to pay Ms. Carr \$1,669. We affirm.

PROCEDURAL BACKGROUND

On August 25, 2015, Ms. Carr filed a request for domestic violence restraining order to protect herself, her two daughters, and her mother from appellant. In the request, Ms. Carr described the two most recent instances of abuse, stating they took place on August 18 and 23, 2015. After a brief hearing on that date, at which both parties were present, the trial court granted a temporary restraining order and setting a hearing for September 15, 2015.

Appellant filed his response on September 15, 2015. At the hearing on that date, the court heard testimony from the parties. The court then issued the restraining order protecting Ms. Carr, her adult daughter, and her mother, to expire August 25, 2016. The court also ordered appellant to pay Ms. Carr \$881 for damaging two mirrors on her car and \$788 for damaging her car door. The payments were to be made by December 15, 2015.

This appeal followed.

DISCUSSION

Defendant argues the restraining order and damage awards are not supported by sufficient evidence. Ms. Carr did not file a respondent's brief. When, as in this case, a party fails to file a respondent's brief, we "may decide the appeal on the record, the opening brief, and any oral argument by the appellant." (Cal. Rules of Court, rule 8.220(a)(2).)

On October 11, 2016, this court filed an order directing appellant to file a letter brief within 20 days addressing whether his appeal became moot when the restraining

order expired on August 25, 2016. Appellant failed to respond to this order. Because it is impossible for this court to grant appellant any effective relief on this point (*Mercury Interactive Corp. v. Klein* (2007) 158 Cal.App.4th 60, 78) we now address only the issue of damages.

The Domestic Violence Prevention Act (Family Code, § 6200 et seq.) authorizes the trial court to issue an order of restitution for out-of-pocket expenses incurred as a direct result of abuse inflicted by the respondent. (Fam. Code, § 6342, subd. (a)(1).)

“ ‘[A] judgment or order of a lower court is presumed to be correct on appeal, and all intendments and presumptions are indulged in favor of its correctness. [Citations.]’ [Citation.]” (*Kurini v. Hanna & Morton* (1997) 55 Cal.App.4th 853, 865.) In addition, when an appellant claims the evidence does not support the court’s order, we view all evidence in the light most favorable to the respondent and resolve all conflicts in support of the order. (*Gooch v. Hendrix* (1993) 5 Cal.4th 266, 278-279.) The appellate court is bound by the trial court’s factual determinations except to the extent that they are not supported by substantial evidence. (*Ibid.*)

Here, the trial court had before it the following conflicting evidence. In the request for domestic violence restraining order, filed August 25, 2015, Ms. Carr listed in the section requesting payments for costs and services the amount of “\$881” for “damage to Passat mirrors” and “will get estimate” for “damage to Passat door.” Also in the request, Ms. Carr described the incident that took place on August 18, 2015, in which she stated, “I slammed the front door behind me and walked to my car. Phillip ran out of the house, attempted to yank the driver’s side door handle off of my car, then began tearing

the side view mirror off my car.” Ms. Carr’s description included appellant following her to a commercial parking lot in his own car: “He got out of his car and was trying to talk me out of mine . . . I began to drive off. He threw open his car door, denting and scratching my door, then grabbed the remaining side view mirror and ripped it off the car.”

In his response, appellant states “I am not the batterer or aggressor. Angela brings the fight to me.” He also attached to his response a four-page typewritten statement¹ stating that Ms. Carr is violent toward him, rather than him being violent toward her. Specifically regarding the damage to Ms. Carr’s vehicle on August 18, 2015, appellant blames Ms. Carr for the confrontation, but does state that he grabbed the car mirror as she drove away from the house in an attempt to stop her. The legible portion of the second page of appellant’s statement appears to state that, later in the commercial parking lot, appellant kicked Ms. Carr’s mirror as she drove toward him and attempted to hit him with her car, and that Ms. Carr’s car door was damaged when she hit appellant’s car door with her car, and pinned him between his car door and the frame.

At the hearing on September 15, 2015, the trial court heard testimony from both parties consistent with their written statements. Appellant described the incident in which he first broke off Ms. Carr’s mirror. He stated she was threatening to kill herself as she drove off and he held onto and broke the car mirror in an attempt to stop her from

¹ The copy provided in the appellate record is mostly, but not completely, legible.

leaving. Ms. Carr denied threatening to kill herself. Each party then described the incident in the commercial parking lot as they had in their written statements.

The trial court here was faced with directly conflicting statements about who was responsible for the damage to Ms. Carr's vehicle. This court is obligated to resolve such conflicts in the evidence in favor of the trial court's order. We conclude that the record contains substantial evidence, which, if believed, supports the order. Therefore, we must affirm.

DISPOSITION

The judgment is affirmed.

Respondent is awarded costs on appeal, if any.

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CUNNISON*
J.

We concur:

RAMIREZ
P. J.

MILLER
J.

* Retired judge of the Riverside Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.